



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 442

## IN THE MATTER OF DAVID CROSSMAN

### DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and David Crossman (Mr. Crossman) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On November 14, 1990, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Crossman. The Commission concluded its inquiry and, on July 11, 1991, voted to find reasonable cause to believe that Mr. Crossman violated G.L. c. 268A, §'17, 18, 19 and 23.

The Commission and Mr. Crossman now agree to the following findings of fact and conclusions of law:

1. Mr. Crossman served on the Hudson Conservation Commission (ConCom) from May 1984 until June 1989. This was an unpaid, part-time position. Mr. Crossman was the chairman of the ConCom from 1986 until he resigned from the ConCom on June 12, 1989. As a member of the ConCom, Mr. Crossman was a special municipal employee as that term is defined in G.L. c. 268A, §1(n).

2. During the times here relevant, Mr. Crossman was self-employed as an engineer and was the president and owner of the engineering firm B&C Associates (B&C). During the period here relevant, Mr. Crossman and B&C had one employee, Jim Fougere (Fougere), who was hired by Mr. Crossman in June 1988. Ninety percent of B&C's clients hire B&C to do environmental consulting work relating to the state Wetlands Protection Act.

3. In early spring 1989, the Hudson Portuguese Club (the Club) began widening a soccer field on its property on Port Street in Hudson, resulting in the destruction of wetlands. As ConCom chairman, Mr. Crossman, on April 10, 1989, signed and issued a ConCom Enforcement Order to the Club ordering the Club to immediately cease and desist from all work in wetlands on its property.<sup>1/</sup>

4. On April 13, 1989, B&C was hired by Robert Veo (Veo) of Veo Associates (an engineering firm) to delineate the wetlands on the Club site.<sup>2/</sup> Mr. Crossman made the decision for B&C to accept the contract for the Club work, however, Fougere actually did the engineering work on the Club project for B&C. Fougere began the Club work on April 13, 1989, which consisted primarily of the determination of the extent of the wetlands which had existed on the Club property prior to the illegal construction work. Fougere did additional work at the Club site on April 28, 1989. On May 3, 1989, Fougere went to a ConCom public hearing regarding the Club matter, and on May 6, 1989, Fougere attended a ConCom site walk at the Club site. On May 17, 1989, a second public hearing was held on the Club matter at which Fougere and Veo made a presentation to the ConCom on behalf of the Club. On that same date, the ConCom issued an Order of Conditions to the Club. Mr. Crossman did not participate in the ConCom public hearings or in the issuance of the Order of Conditions to the Club. B&C did a substantial amount of additional work on the Club project after May 1989. During August, September and October 1989, B&C did a total of over 25 hours of work on the Club project.

5. Although B&C was hired by Veo for the Club work, B&C billed and was paid by the Club directly. On May 26, 1989, B&C billed the Club \$360 for the work it did in April and May 1989. B&C received payment in full on June 14, 1989. In September 1989, B&C billed the Club \$912.50 for the additional work done after May 1989, which amount was paid on October 20, 1989. On November 3, 1989 B&C billed the Club a further \$187.50, which was paid on November 16, 1989. Mr. Crossman personally received a substantial portion of the fees billed and received by B&C for the work on the Club matter in 1989. All B&C billing was done and payments received by Mr. Crossman.

6. General Laws c. 268A, §17(a), in pertinent part, prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly, requesting or receiving compensation from anyone other than the municipality in connection with a particular matter of direct and substantial interest to that municipality.<sup>3/</sup> For a special municipal employee, such as Mr. Crossman, §17's prohibitions apply only in relation to particular matters (a) in which the employee has participated, as such, or (b) which are or within one year have been the subject of his official responsibility, or (c) which are pending in his municipal agency.<sup>4/</sup>

7. The ConCom's proceedings relating to the Club's destruction of wetlands were a particular matter in which the Town of Hudson had a direct and substantial interest. As set forth above, Mr. Crossman participated in those proceedings as a ConCom member.

8. By B&C's May 26, 1989 billing of \$360 for the April and May 1989 work on the Club matter, which was either done by Mr. Crossman or under his direction and control, Mr. Crossman, while a municipal employee, indirectly requested compensation from someone other than the Town of Hudson in relation to a particular matter of direct and substantial interest to that municipality in which Mr. Crossman had participated as a municipal employee. In so doing, Mr. Crossman violated G.L. c. 268A, §17(a).

9. General Laws c. 268A, §18(a) prohibits a former municipal employee from receiving compensation, directly or indirectly, from anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest and in which the former municipal employee participated while so employed.

10. By, in June, October and November 1989, after Mr. Crossman had ceased to serve as a ConCom member, receiving compensation from the Club, indirectly through B&C, for work done by B&C for the Club, Mr. Crossman, as a former municipal employee, received compensation from someone other than the Town of Hudson in connection with a particular matter in which that municipality had a direct and substantial interest and in which Mr. Crossman had participated as a municipal employee. In so doing, Mr. Crossman violated G.L. c. 268A, §18(a).

11. General Laws c. 268A, §19, in relevant part, prohibits a municipal employee from participating, as such, in a particular matter in which he or a business organization in which he is serving as an officer, director or employee has a financial interest.

12. In that B&C's work for the Club was occasioned by the ConCom Enforcement Order issued by Mr. Crossman on April 10, 1989, B&C (and Mr. Crossman) clearly had a financial interest in the ConCom's ratification of that order on April 19, 1989. Thus, Mr. Crossman's participation as a ConCom member in the ConCom's vote to confirm the Enforcement Order to the Portuguese Club violated §19.

13. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position, or the undue influence of any party or person.<sup>5/</sup>

14. By undertaking to have B&C provide engineering services to the Club after he had acted officially concerning the Club as a ConCom member and while the Club matter was pending before the ConCom, Mr. Crossman acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Mr. Crossman could be improperly influenced in the performance of his official duties. In so doing, Mr. Crossman violated §23(b)(3).

15. During the time that Mr. Crossman was a ConCom member after he formed B&C in 1985, Mr. Crossman repeatedly contracted with private parties to have B&C perform Wetlands Act consulting work in Hudson in connection with matters which were subject to his official responsibility as a ConCom member.<sup>6/</sup> For example: (a) between March 1988 and October 1989, B&C delineated wetlands and did other engineering consulting work on the Indian Rock project on Manning Street, Hudson, which was the subject of a ConCom Order of Conditions issued in 1985. B&C billed its private client a total of over \$3,800 for this work prior to June 1989 and received a substantial partial payment of the billed amount during that period; (b) in December 1988, B&C billed and received payment in the amount of \$75 for wetlands delineation work done for Hugo Guidotti on his property off Brigham Street in Hudson. At that time, Guidotti was seeking an Order of Conditions from the ConCom for the construction of a single family home on the property; and (c) on June 9, 1989, B&C received payment of approximately \$100 for engineering services done in May 1989 at the Casaceli Trucking site in Hudson in connection with a May 1989 ConCom Enforcement Order in whose issuance Mr. Crossman had participated. Mr. Crossman did these billings and received these payments for B&C. In requesting and receiving compensation for these and other projects, Mr. Crossman, while a special municipal employee, requested and received compensation from someone other than the Town of Hudson in connection with particular matters in which that municipality was a party and had a direct and substantial interest and which were the subject of his official responsibility. In so doing, Mr. Crossman violated §17(a).

In view of the foregoing violations of G.L. c. 268A by Mr. Crossman, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Crossman:

1. that Mr. Crossman will pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating G.L. c. 268A; and
2. that Mr. Crossman waives all rights to contest the findings of fact, conclusions of law, and terms and conditions contained in this Agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

**Date: May 22, 1992**

<sup>1/</sup>On April 19, 1989, the ConCom, with Mr. Crossman present and presiding as chairman, unanimously voted to confirm the Enforcement Order issued to the Club by Mr. Crossman.

<sup>2/</sup>The purpose of such a wetlands delineation is to ascertain whether there are wetlands present subject to ConCom jurisdiction and to determine the parameters of those wetlands.

<sup>3/</sup>The statute defines "particular matter" as "any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property." G.L. c. 268A, §1(k).

<sup>4/</sup>Clause (c) does not apply in the case of a special municipal employee who serves on no more than 60 days during any period of 365 consecutive days.

<sup>5/</sup>Section 23(b)(3) provides further that, "It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion." No such disclosure was made by Mr. Crossman in connection with his actions affecting the Club and B&C.

<sup>6/</sup>From 1987 through 1990, B&C did approximately 36 private jobs in Hudson.